

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

TRAVIS RHODES, as Personal
Representative of the Estate of
TIMOTHY E. RHODES,

Plaintiff,

v.

Civil Action No. 2:19-cv-00626

DEPUTY SHERIFF MICHAEL KING,
and the **ROANE COUNTY COMMISSION,**

Defendants.

**VERIFIED PETITION FOR APPROVAL OF WRONGFUL DEATH
SETTLEMENT AND DISTRIBUTION OF PROCEEDS**

Pursuant to W. Va. Code § 55-7-7, Petitioner Travis Rhodes, Individually and as Personal Representative of the Estate of his brother, Timothy E. Rhodes, deceased, (“Petitioner”) respectfully represents and shows unto this Court as follows:

I.

The Petitioner, Travis Rhodes, an adult over the age of 18, is the duly appointed Personal Representative of the Estate of Timothy E. Rhodes, as more particularly appears from the Letter of Administration from the Clerk of the Roane County Commission, West Virginia, dated the 22nd day of March, 2019, a copy of which is attached hereto as "**Exhibit A.**" The authenticity of this document has been stipulated and agreed to by the parties.

II.

This claim is for the alleged wrongful death of Petitioner’s brother, Timothy E. Rhodes (sometimes also referred to herein as “Timmy” or “decedent”), caused by a shooting incident that occurred on the 22nd day of February, 2019, in the Ambler Ridge area of Roane County, West Virginia. As a result of the injuries he sustained in the Incident, Timmy died. Petitioner brought this wrongful death action against Defendants, Roane County Commission and Deputy Sheriff Michael King, alleging several causes of action, including violations of Timmy’s Constitutional Rights and negligence that Defendants are liable for Timmy’s injuries and death based upon

Defendants' unsafe practices, acts and omissions. *See generally*, Complaint. Defendants have denied these allegations and any and all liability for Timmy's injuries and death. *See generally*, Defendants' Answer.

III.

Petitioner, Travis Rhodes, as the duly appointed Administrator of the Estate of Timothy E. Rhodes, has negotiated a settlement of the wrongful death claim. Under the terms of the settlement, Defendant Roane County Commission shall pay to Mr. Rhodes, on behalf of the Estate of Timothy E. Rhodes, deceased, the total sum of seven hundred thousand dollars and zero cents (\$700,000.00), and Plaintiff shall voluntarily dismiss with prejudice Defendant Deputy Sheriff Michael King. The payment from the Roane County Commission is the full and complete settlement for all injuries and expenses, including past, present and future expenses and damages. In addition, the Petitioner agrees that any and all attorney fees and expenses are to be paid out of the settlement proceeds. There are no other outstanding expenses or obligations of the Estate because no medical expenses were incurred associated with Timmy's death and all funeral and burial expenses (\$7439.88) were previously paid by Travis Rhodes personally. By payment of these proceeds, Defendant Roane County Commission is not admitting any liability for Timmy's injuries and damages, and instead is resolving this matter to avoid further litigation and related expenses, and to attain its peace.

IV.

Pursuant to West Virginia Code §55-7-6, the Court may award damages it finds to be fair and just, and may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent or otherwise may be equitably entitled to share in the distribution. Timmy was not married and is survived by the following potential beneficiaries: his brother and Petitioner, Travis Rhodes; his brother, William Rhodes; and his mother, Lori Rhodes. After due consideration, Petitioner respectfully asks the Court to distribute the settlement proceeds, as set forth in detail below.

V.

To the best of Petitioner's knowledge and belief, there are no other dependents, beneficiaries or individuals equitably entitled to share in the Estate of the decedent other than those referenced herein.

VI.

Petitioner believes the sum of seven hundred thousand dollars and zero cents (\$700,000.00) is a fair and reasonable settlement and in the best interests of the Estate. Petitioner respectfully requests this total settlement sum be approved.

VII.

Petitioner, Travis Rhodes, Individually and as Personal Representative of the Estate of his brother, Timothy E. Rhodes, deceased, engaged the law firm of Calwell Luce diTrapano PLLC to prosecute Petitioner's wrongful death claim pursuant to an agreement that calls for Petitioner to pay said law firm a contingent fee equal to forty percent (40%) of the gross monies recovered and to reimburse the law firm for expenses incurred in prosecuting the wrongful death claim. Petitioner further consented to a co-counsel agreement between Calwell Luce diTrapano PLLC and Goodwin & Goodwin, LLP whereby both firms would prosecute the wrongful death claim and share in the previously agreed upon forty percent attorney fee. Petitioner has been advised of the amount of legal fees and estimated expenses due the firms of Calwell Luce diTrapano PLLC and Goodwin & Goodwin, LLP and believes the sum is fair and reasonable and should be accepted.

VIII.

Petitioner represents that notice has been sent, via certified mail, to all potential beneficiaries, including: Timmy's brother, William Rhodes at 526 Amma Road, Clendenin, WV 25045; and Timmy's mother, Lori Rhodes at 21 Watts Chapel Road, Kenna, WV 25248, that a settlement has been reached and the distribution below proposed. Should the Court determine that a hearing regarding the approval and distribution of the settlement is necessary, appropriate notice of said hearing will likewise be provided to the beneficiaries, including notification that each said beneficiary or potential beneficiary has a right to appear at the hearing as a statutory beneficiary and give testimony.

IX.

Petitioner respectfully asks the Court to approve the total settlement sum of \$700,000.00, and the distribution of the settlement proceeds as follows:

- A. Per Petitioner's Representation Agreement with Calwell Luce diTrapano PLLC, the legal fee in this matter is two hundred eighty thousand dollars (\$280,000.00), which shall be shared between Calwell Luce diTrapano PLLC and Goodwin & Goodwin, LLP. Petitioner's share of expenses totals \$66,345.18, with the total sum due to Calwell Luce diTrapano PLLC and Goodwin & Goodwin, LLP equaling \$346,345.18.

- B. There being no outstanding liens, bills or expenses related to medical treatment, and all funeral and burial expenses having been previously paid by Travis Rhodes personally, all settlement funds remaining after deduction of all attorney fees, costs and expenses described in preceding paragraph IX.A, total **\$353,654.82**, should be distributed as follows:
- i. \$7,439.88 to Travis Rhodes as reimbursement for the costs associated with the funeral and burial of Timothy Rhodes.
 - ii. \$246,214.94 to Travis Rhodes, as Timmy's brother and administrator of the Estate of Timothy E. Rhodes. Travis has spent considerable time and has incurred expenses through execution of his duties as Administrator of the Estate of Timothy E. Rhodes, including without limitation payment of costs associated with estate administration, lost wages due to missed work, travel expenses, fees and other costs.
 - iii. \$100,000.00 to William Rhodes, as Timmy's brother. Mr. William Rhodes has verbally agreed to the proposed distribution set forth above.
 - iv. \$0 to Lori Rhodes, as Timmy's mother. Mrs. Rhodes has verbally expressed a desire to forgo receipt of any settlement proceeds in lieu of distribution of the proceeds exclusively to Travis and William and has specifically agreed to the proposed distribution set forth above.
- C. In addition to providing notice of the settlement as set forth above, Petitioner is providing a copy of this Petition to each of the above beneficiaries and potential beneficiaries and expects that each such person will memorialize their verbal consent to the distribution requested herein in writing. Petitioner anticipates providing the Court with a written consent and approval of this proposed distribution signed by each beneficiary.

X.

Petitioner moves the Court to approve this settlement, thereby granting him authority, as Administrator of the Estate of Timothy E. Rhodes, to execute a full and complete release, forever discharging the Roane County Commission from any and all further liability in connection with or arising out of the shooting incident that occurred on February 22, 2019, and the resulting death of Timothy E. Rhodes.

XI.

Petitioner moves the Court to approve this settlement, recognizing that he will have no further claim, either individually or as Administrator of the Estate of Timothy E. Rhodes, against the Roane County Commission or Deputy Sheriff Michael King. Petitioner further recognizes that in settling this wrongful death claim for and on behalf of the Estate of Timothy E. Rhodes, that any and all claims that the Estate and/or its beneficiaries may now or in the future have against the Roane County Commission or Deputy Sheriff Michael King will be forever released and discharged.

XII.

Petitioner, in asking the Court to approve the settlement set forth herein, acts in his capacity as Administrator of the Estate of Timothy E. Rhodes.

WHEREFORE, Petitioner respectfully prays that his Petition be inspected by this Court; that the Court approve the settlement and disbursement of the proceeds proposed herein, as well as payment of attorneys' fees and expenses as set forth herein; that the Court authorize Petitioner to enter into a Settlement Agreement and Release, and for such other and further relief as the Court may deem just and proper.



Travis Rhodes,
Personal Representative of the Estate of
Timothy E. Rhodes, deceased

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF Kanawha to-wit:

Travis Rhodes, being first duly sworn, deposes and says that he has read the *Verified Petition for Approval of Wrongful Death Settlement and Distribution of Proceeds* and is familiar with the contents thereof, that the facts as set forth are true, except as to the matters that are stated to be upon information and belief, in which event he believes them to be true.

Travis Rhodes

Travis Rhodes,
Personal Representative of the Estate of
Timothy E. Rhodes

Taken, subscribed and sworn to before the undersigned Notary Public in my said County on this the 3rd day of December, 2021.

My commission expires May 5, 2026



Erin Elizabeth Wright
Notary Public

United States of America

State of West Virginia



County of Roane, ss:

Letter of Administration

Estate of TIMOTHY ED RHODES

I, CHARLES B WHITE Jr, Clerk of the Roane County Commission, in the State of West Virginia, do hereby certify that TRAVIS L RHODES was on the 22nd day of March, 2019, appointed by the Roane County Commission as administrator(s) of the Estate of TIMOTHY ED RHODES, duly qualified as such by taking oath prescribed by law, and by giving approved bond in the sum of \$0.00, as required by law.

NOW THEREFORE, be it known that said appointment is now in full force and effect and that full faith and credit are due and should be given to all the acts of the said TRAVIS L RHODES as such administrator(s) of the Estate of TIMOTHY ED RHODES, as well in all jurisdictions, as elsewhere.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Roane County Commission at my office in said County on the 22nd day of March, 2019.

A handwritten signature in black ink, reading "Charles B. White Jr.", written over a horizontal line.

CHARLES B WHITE Jr
Clerk of the Roane County Commission

A handwritten signature in blue ink, reading "Lynn Webb", written over a horizontal line.

Lynn Webb
Deputy Clerk

EXHIBIT A



Charles B. White, Jr.
Clerk of the Roane County
Commission
200 Main Street
Spencer, WV 25276
304-927-2860

NOMINATION AND WAIVER FOR APPOINTMENT OF ADMINISTRATOR/TRIX

To the County Commission of Roane County, West Virginia or the Clerk thereof in vacation or recess:

I, Loei M. Rhodes, mother (state relationship to decedent) of Timothy Rhodes, Deceased, who died in testate on the 22nd day of February, 2019, hereby waive my right to qualify as Administrator/trix of his/her estate, and nominate and ask you to appoint Travis Rhodes as such.

Given under my hand this 22nd day of March, 2019.

Signed Loei Rhodes

State of West Virginia
County of Roane, to wit:

I, Lynn Webb, a Notary Public of Roane County, State of West Virginia, do certify that Loei M. Rhodes, whose name is signed to the writing above, bearing the date of 22nd day of March, 2019, has this day acknowledged the same before me in my said County.

Given under my hand this 22nd day of March, 2019.

Lynn Webb
Notary Public

My Commission expires: July 17, 2020

